

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL INDUSTRY )  
AVERAGE WHOLESALE PRICE )  
LITIGATION ) MDL No. 1456  
                                      ) Civil Action No. 01-12257-PBS  
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**THIS DOCUMENT RELATES TO:**      ) Hon. Patti B. Saris  
  )  
*United States of America ex rel. Ven-a-Care* ) Magistrate Judge Marianne B. Bowler  
*of the Florida Keys, Inc., v. Abbott* )  
*Laboratories, Inc., CIVIL ACTION NO. 06-* )  
*11337-PBS* )

**UNITED STATES' MOTION FOR LEAVE TO FILE ITS  
FIRST AMENDED COMPLAINT**

The United States of America, through its undersigned counsel, respectfully moves the Court pursuant to Rule 15(a) of the Federal Rules of Civil Procedure for leave to file its First Amended Complaint (Exhibit 1).<sup>1</sup> There is a “‘liberal’ amendment policy underlying Rule 15.” *O'Connell v. Hyatt Hotels of Puerto Rico*, 357 F.3d 152, 154 (1st Cir. 2004); Fed. R. Civ. P. 15(a) (“leave shall be freely given when justice so requires”). The United States’ First Amended Complaint contains allegations that (1) incorporate information Abbott concealed from the government during its investigation of the *qui tam* suit and (2) show the scope of Abbott’s fraudulent conduct to be much broader than originally understood. Accordingly, amendment of the United States’ original Complaint is justified.

The principal addition to the United States’ First Amended Complaint is the inclusion of 27 paragraphs of factual allegations regarding home infusion pharmacies owned and operated by Abbott. These home infusion pharmacies submitted reimbursement claims to federal and state governments seeking reimbursement for drugs, including drugs manufactured by Abbott. First

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<sup>1</sup> On November 5, 2007, this Court directed the United States to file a motion for leave to file its First Amended Complaint. The United States had previously filed the First Amended Complaint on June 4, 2007. See Docket No. 4281.

Amended Complaint at ¶¶ 111-138. Thus, Abbott operated Medicare and Medicaid providers and directly received inflated reimbursement spreads for its own drugs. *Id.* at ¶¶ 118-121, 126-131. Abbott never provided information regarding this business to the United States prior to the filing of the United States' original Complaint.

The other notable addition to the United States' First Amended Complaint is claims regarding Acyclovir Sodium (Acyclovir). First Amended Complaint at ¶¶ 104-110. The United States is adding this megaspread drug to its First Amended Complaint because it collected evidence from an Abbott employee confirming that Abbott discussed AWP and spread-related information with customers in marketing the drug. Acyclovir is at issue in other law suits involving the same or similar claims, including a suit currently pending in this Court brought by New York City and the New York Counties against Abbott. Abbott has or will have an obligation to engage in discovery on Acyclovir regardless of its existence in the United States' First Amended Complaint.

The United States submits that there is no undue delay, bad faith or dilatory motive in adding these claims. Abbott's discovery efforts and defenses have not been drug specific, and there is no prejudice to Abbott in allowing the United States to add claims flowing from previously concealed and newly-revealed evidence regarding its efforts to manipulate government reimbursements, marketed spreads and – as has now been revealed – directly profit off inflated government reimbursements for its drugs. The United States' additional claims do not involve new theories, just new and related factual allegations.

Wherefore, the United States respectfully requests that the Court grant leave to file its First Amended Complaint.

Respectfully submitted,

For the United States of America,

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Dated: November 7, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused an electronic copy of the above **UNITED STATES' MOTION FOR LEAVE TO FILE ITS FIRST AMENDED COMPLAINT** to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Gejaa Gobena

Dated: November 7, 2007

Gejaa Gobena